

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

PAREXLAHABRA, INC.¹

Employer

and

Case 21-RC-20839

GENERAL TRUCK DRIVERS, OFFICE,
FOOD WAREHOUSE UNION, TEAMSTERS
LOCAL 952, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record³ in this proceeding, the undersigned makes the following findings and conclusions.⁴

¹ The Employer's name appears as corrected at the hearing.

² The name of the Union has been changed to reflect that it is no longer affiliated with the AFL-CIO.

³ The Employer timely filed a brief, which was duly considered.

⁴ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I. SUMMARY

The Employer, Parexlahabra, Inc., is a California corporation engaged in the business of manufacturing stucco and related building products at a facility located in Riverside, California (hereinafter referred to as the “plant”). The Petitioner filed the instant petition seeking to represent the production employees employed by the Employer at its plant.⁵ The Employer seeks to exclude the sample department from the petitioned-for unit because they do not share a sufficient community of interest with the other unit employees.⁶

Based on the record as a whole and the Employer’s brief, I find that the sample department employees share a sufficient community of interest with the production employees in the petitioned-for unit and that they should be included in the appropriate unit. Accordingly, I shall direct that an election be held in the petitioned-for unit.

Below, I have set forth the record evidence concerning the Employer’s operations, including the evidence concerning the community of interest factors the Board considers when determining unit appropriateness. Following the presentation of the evidence, I have set forth a section applying the Board’s legal standards to the

⁵ The petition states that there are approximately 40 employees in the petitioned-for unit. Of the 40, the record indicates that 13 are machine operators, 9 are forklift drivers/material handlers, and 6 are color men.

⁶ The Employer and the Petitioner stipulated that the following unit is an appropriate unit within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time yardmen, leadmen, shipping, forklift drivers/material handlers, colorman employees and machine operators employed by the Employer at its facility located at 2150 Eastridge Avenue, Riverside, California.

Excluded: All other employees, quality control employees, office clerical employees, customer service employees, research and development employees, logistics employees, maintenance mechanic employees, guards, professional employees, and supervisors as defined in the Act.

evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE

A. The Employer's Operations

The Employer operates two manufacturing plants, one in Riverside, California, which is the one involved in this proceeding, and one in Anaheim, California, as well as a warehouse in North Hollywood, California. At the Riverside plant, the Employer manufactures stucco products for exterior building veneers. Five departments are located within the Riverside plant: (1) production, (2) samples, (3) quality control, (4) research and development, and (5) maintenance. An office structure which contains the sample department, among other areas, as well as the sales department, is located inside the same building as the warehouse where the rest of the production work is performed.⁷ Although the sample department is housed inside this office structure, the mixing machines used by sample department employees are located outside the sample department, in the plant itself. The lunch room, as well as the restrooms, are also located in the plant.

All but the five sample department employees in the petitioned-for unit work in the production department. The production department blends raw materials according to particular recipes, packages the finished product in bags and places them in stock for sale. Several categories of employees work in the production department: machine operators, color men and forklift drivers/material handlers. The 13 machine

⁷ The record does not indicate all the departments located inside this office structure. While the record does indicate that sales department employees work in this office structure, it is not clear how many sales department employees work there or if the sales manager is the only supervisor for that department.

operators are responsible for mixing the products the Employer manufactures according to specified recipes using the Employer's standard color chart of 30 colors. However, if custom colors are required, the six color men design the recipe. Normally, color men use formulas they obtain from books kept in a central location in the sample department where they are created but sometimes the color men require assistance from sample department employees. The machine operators or the color men, depending on the order, add raw materials into mixers in the appropriate quantities. The quantity mixed at any one time ranges from 1800 to 7000 pounds. After the materials are mixed for the appropriate amount of time, other machine operators package the product into containers. Once packaged into containers, the nine forklift drivers/material handlers place the product either in stock or directly in customer vehicles.

The sample department, as its name implies, is responsible for creating the samples or sales aides requested by the Employer's salesmen to give to the color coordinators, including architects and builders, who will purchase the Employer's products. After obtaining finished product from the production area, the five sample department employees produce samples by mixing raw materials and adding water. Sometimes they mix the product by hand while other times they use mixing machines similar to cake mixers to produce small quantities of all the different textures and colors of products the Employer offers. In contrast to the production department where thousands of pounds of product are mixed, the quantity for a batch mixed in the sample department is approximately 11 pounds. After the product is mixed, the employees use large and small dryers to dry the samples and then box them. In addition, the sample department creates display boards for the major dealers that carry the Employer's

product. At that point the samples are available for the salesmen to distribute to dealers. When orders are placed for product based on these samples, they are placed directly with a centralized order desk located at the Employer's corporate office.

B. COMMUNITY OF INTEREST FACTORS

1. Functional Integration

The record revealed that all aspects of the Employer's operation, from the production of samples and display boards to the mixing and storage of containers with finished product, are performed inside the same building.

2. Frequency of Contact Between Employees

The Employer functionally divides employees in the petitioned-for unit into two groups—the production department and the sample department. The production department employees work three shifts providing 24-hour coverage while the sample department employees work Monday through Friday, from 6:30 a.m. to 5:00 p.m., the same hours as the open hours of the office portion of the facility.

In terms of regular contact during work, sample department employees have contact with production department employees whenever they need to obtain new bags of product to mix for samples, apparently about twice a week, as well as whenever they use the sample department mixers which are located in the plant, outside the confines of the sample department itself. Color men in the production department also have contact with the sample department whenever they have to retrieve a color formula for a custom color because all the color formulas are kept in the same place in the sample department. Although normally the color men obtain the formulas themselves, sometimes they require the assistance of the sample department employees.

Production and sample department employees have frequent contact during the workday. They all use the same lunch room for their lunch and breaks, bathrooms and locker rooms for changing in and out of their uniforms, as well as the same parking lot. In addition, although the sample department has meetings of its own,⁸ all employees attend weekly safety meetings together.

3. Interchange With Other Employees

According to Brian Carriere, Plant Manager for the Riverside plant, as well as the Employer's Anaheim production facility and North Hollywood warehouse, employees are not transferred between the sample and production departments on a temporary basis because the skills and functions in the two departments are completely different. Although Carriere testified that it was not common for employees to transition from the production department to the sample department, he also testified that one of the five employees in the sample department transferred from the production department to the sample department and the lead in the sample department transferred from the Anaheim facility where he worked in the production department as a forklift driver.

4. Common Skills and Functions

While the record does not contain any written job descriptions, Plant Manager Carriere testified about the knowledge and skill requirements and specific job functions for the employees in both the sample and production departments. Carriere testified that the production department machine operators lift 90-pound bags of materials throughout the day while operating the machines that mix the materials according to the Employer's formulas. Production department employees, according to Carriere, lack the

⁸ The record does not indicate the frequency of these meetings.

dexterity and eye for color required of the sample department employees where having a background in color is important. However, the agreed upon unit includes colorman employees who presumably also need an eye for color.

Carriere testified that sample department employees require more training than production department employees and that their jobs are more technical. While the record does not indicate that any specialized education, license or background is required to work in the sample or the production department, it takes six months before a sample department employee is “up to speed” as compared with 3-4 weeks for a production department employee.

5. Commonality of Wages and Other Working Conditions

While the record does not reveal the details of the wage scale for the employees in the petitioned-for unit, the starting pay of the sample department employees is \$1 more per hour than for employees in the production department. Sample and production department employees, as well as others at the facility, have the same benefits, including vacation, overtime rules, holidays, health insurance and retirement plans.⁹ In addition, all nonexempt employees, including the sample and production department employees, use the same timeclock. All employees, sample and production department employees as well as maintenance mechanics, quality control and research and development employees, also wear the same uniform and have copies of the same company rule book which contains the only rules governing production and sample department employees.

⁹ Carriere testified that he did not “believe” sales employees, who are exempt employees because they are professional employees, have different benefits than the nonexempt employees, including the sample and production departments

6. Supervision

Although the supervisory hierarchy was not disclosed, Carriere testified that there was no common supervision between the production and sales departments. Rather, he testified that the production department employees are under production management and the sample lab employees are under the sales management and report to the sales manager.

7. History of Collective Bargaining

Although there is no history of collective bargaining at the Riverside plant, the Petitioner represents employees at the Employer's Anaheim manufacturing facility.¹⁰ The unit at the Anaheim plant includes laborers, machine operators, customer service employees,¹¹ sackers, colormen, maintenance mechanics, and maintenance mechanics helper but does not include sample department employees.

II. ANALYSIS

The Employer alleges that the sample department employees do not share a sufficient community of interest with the other production department employees to warrant their inclusion in the petitioned-for unit. In The Boeing Company, 337 NLRB 152 (2001), the Board articulated its policy for determining appropriate units:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry in the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. Overnite Transportation Co., 331 NLRB 662, 663 (2000); NLRB v. Lake County Assn. for the Retarded, 128 F.3d 1181, 1185 fn. 2

¹⁰ Other than the fact that the Anaheim facility is a manufacturing facility like the Riverside plant, the record contains no details regarding the similarity or differences between the sample department employees employed at the two facilities.

¹¹ Customer service employees who perform the same function as forklift drivers at the Riverside plant.

(7th Cir. 1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. State Farm Mutual Automobile Insurance Co., 163 NLRB 677 (1967).

The Board's primary means of evaluating the appropriateness of a unit is determining whether the proposed unit shares a community of interest. The Board examines several factors to determine whether the proposed unit shares a community of interest including: (1) functional integration, (2) frequency of contact with other employees, (3) interchange with other employees, (4) degree of skill and common functions, (5) commonality of wages, hours, and other working conditions, and (6) shared supervision. Publix Supermarkets, Inc., 343 NLRB No. 109 (2004).

In the present case, the Employer has an integrated operation in which both the sample department employees and the production department employees perform integral functions because they both create the same product, just in different quantities. While the sample department employees make small quantities that are distributed to potential customers in boxes or on display boards, once the customer selects the sample, the production department mixes large quantities of the same product. All aspects of the Employer's production operation, from the creation of samples and display boards to the mixing and storage of containers with finished product based on those samples, are performed inside the same building. The Employer argues that the sample department should be excluded because it could be an offsite, stand-alone operation. While the plant potentially could be redesigned, in its current configuration employees in the production department retrieve formulas for the custom colors from the sample department where they are maintained and the sample department employees use mixers to create samples located inside the plant. Moreover, even if it was a stand-alone

operation, the other factors noted establish a community of interests, and therefore constitutes an appropriate unit.

In addition to functional integration, there is ample evidence of contact between the employees in the sample department with those in the production department both during working time and nonworking time. During working time, color men in the production department seek assistance from sample department employees with the formulas for custom colors and the sample department employees obtain the product they use for creating boxes of samples and display boards from the same place other production employees do. Moreover, while the mixers the sample department employees use to mix the samples are much smaller than the mixer machine operators in the production department use, the sample department mixers are not located within the confines of the office area of the building where the sample department is located. Rather, all of the mixers, those used by the machine operators, as well as those used by the sample department employees, are located in the warehouse area of the plant. The sample department and production department employees, along with the other employees in the plant, attend weekly safety meetings together.¹²

During nonworking time the employees in the sample department frequently come in contact with employees in the production department. They enjoy lunch and breaks in the same lunchroom and they use the same locker areas to change their uniforms. They also use the same time clock and the same parking lot.

¹² The Employer minimizes the significance of this contact because other employees in the plant also attend these meetings. While the presence of other employees may somewhat dilute the contact between the sample and production department employees, the presence of other employees does not warrant the conclusion that sample department employees do not interact with other production department employees at the weekly safety meetings.

Regarding skills and functions, the record demonstrates that they generally share common skills and functions because they are both creating the same product, just in different quantities. While the Employer argues that the sample department employees possess a higher skill level than production employees because their job requires more technical knowledge whereas the production employees' tasks require greater physical strength, neither department requires employees to possess special licenses or formal training. Where proficiency is developed by on-the-job training rather than a formal apprenticeship, the difference in skill level is not dispositive of whether employees share a community of interest. See Allied Gear and Machinery Company, Inc., 250 NLRB 679 (1980).

With regard to wages, hours and other working conditions, the record evidence demonstrates that sample department employees have similar wages, hours and working conditions to the production employees. Although the sample department employees starting wage is \$1.00 per hour higher and their hours differ somewhat because, unlike production employees, they do not provide 24-hour coverage, both are hourly workers subject to the same time clock and overtime rules. They also have the same fringe benefits and are subject to the same personnel policies and practices.

With regard to supervision, the production department employees are under the production management whereas sample department employees are under the sales department and report to the sales manager. While separate supervision weighs against finding that employees share a community of interest, the Board has found that employees who are separately supervised share a sufficient community of interest when they perform similar tasks and have the same wage system, as well as same fringe

benefits and personnel policies, and there is a high degree of functional integration.

J. C. Penney Company, Inc., 328 NLRB 766 (1999); Seaboard Marine, Ltd., 327 NLRB 556 (1999). Accordingly, considering the similarity of the tasks, the functional integration and the commonality of working conditions, the separate immediate supervision of the sample department employees does not justify their exclusion from the unit.

Finally, with regard to bargaining history, there is no history of collective bargaining at the Riverside plant. While the sample department employees were apparently excluded from a bargaining unit at the Anaheim facility, it is well-settled that the bargaining pattern at other plants of the same Employer is not controlling.

Big Y Foods, Inc., 238 NLRB 855 (1978). Moreover, the record herein contains no evidence regarding any similarity in working conditions between the Riverside and Anaheim plants. Because the unit description of the production unit at the Anaheim facility contains classifications not included in the petitioned-for unit, it is impossible to draw any conclusions regarding the similarity between the sample departments at the two facilities.

In sum, I find that the Employer has failed to establish that the sample department does not share a sufficient community of interest to be included in the petitioned-for unit. This failure is based on the record and the functional integration of the Employer's operations and level of contact between the sample department and production employees. Additionally, the sample department and production employees share skills, wages, benefits, and working conditions.

III. CONCLUSION

On the basis of the foregoing and the record as a whole, I find that the sample department employees share a sufficient community of interest with the production employees to be included in the petitioned-for unit. Therefore, I shall include them in the petitioned-for unit. Accordingly, I shall direct an election in the following appropriate unit (hereinafter “Unit”):

 All full-time and regular part-time yardmen, leadmen, shipping, forklift drivers/material handlers, colorman employees, machine operators, and sample department employees employed by the Employer at its facility located at 2150 Eastridge Avenue, Riverside, California; excluding all other employees, quality control employees, office clerical employees, customer service employees, research and development employees, logistics employees, maintenance mechanic employees, guards, professional employees, and supervisors as defined in the Act.

There are approximately 45 employees in the Unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work

during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **General Truck Drivers, Office, Food Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized

election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994).

In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, **on or before** August 11, 2005. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (213)894-2778. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **5 p.m., EST, on August 18, 2005**. This request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site:**www.nlr.gov**.

DATED at Los Angeles, California, this 4th day of August 2005.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board